IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SHOW CAUSE NOTICE NO.168 OF 2006
IN
NOTICE OF MOTION NO.2127 OF 2003
IN
SUIT NO.2509 OF 1988

Smt.Roopa Bahirwani and Ors. ..Plaintiffs

Vs.

Smt.Hema G.Anan ..Defendant

And

Secretary, Anju Co-op.Housing Society Ltd.and Ors. ..Respondents

Mr.B.R.Matta for the plaintiffs

Mr.Kedar Dighe a/w Mr.Vishal Khanawkar for the defendant

Ms.Merlyn Monterio for the respondent no.2

Mr.Rajendra R.Mishra for respondent nos.3 and 4

CORAM : S.U.KAMDAR, J
DATED : 4TH APRIL, 2006

P.C.:

1. The present show cause notice has been issued on the basis that the defendant has

committed a breach of the injunction order dt.15.10.90 passed in Notice of Motion no.215 of 1998. There is no dispute in the present case that there has been a breach and / or violation of the injunction order namely not to transfer or sell or dispose of the suit flat.

2. The defendant has in breach of the said order transferred the suit flat and respondent no.2, 3 and 4 are the subsequent purchasers thereof. The present respondent nos. 3 and 4 are residing in the suit flat. In view of the fact that the suit itself is settled between the parties and the defendant and the respondents and in view of the unconditional apology tendered by respondent nos.3 and 4, I am of the opinion that the present show cause notice should not be proceeded further. Interim orders, if any stands vacated. In the light of the aforesaid, show cause notice as against respondent nos.2, 3 and 4 is discharged.

3. In so far as the defendant s is concerned, there is no dispute that the defendant is guilty of breach of the said injunction order and has

disposed off the flat in contravention of the order dt.15.10.90 passed by this court. However, the learned counsel for the defendant has submitted an unconditional apology. He further submits that the defendant who is a lady and of an advanced age should be given a sympathetic consideration and therefore this court should not take any action for any penalty for contempt of court. He also further submits that suit having been settled amicably between the parties, the court must show indulgence in so far as the defendant is concerned.

4. Pursuant to the suggestion, the defendant has deposited a sum of Rs.50000 towards the cost with the Maharashtra Legal Services Authority and the receipt has been produced. In so far as penalty to the defendant is concerned, I am of the opinion that looking at the old age of the defendant and her ill health and further in view of the submitting of unconditional apology to this court, I must take a lenient view in the matter. However, the lenient view in the matter, cannot mean absolute discharge of the defendant who has admittedly committed breach of the interim order

passed by this court. But keeping in mind the aforesaid facts, I sentence the defendant to the Civil imprisonment of one day till the rising of the court today. I further direct the defendant to sit in the office of the Prothonotary and Senior Master, High Court, Mumbai for a day i.e. till 5 p.m. towards undergoing the punishment of civil imprisonment of one day which has been levied on the defendant. Show Cause Notice disposed of accordingly as against the defendant also.

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. By consent of the parties, the following order is passed:

. Suit is disposed of in terms of the consent terms entered into between the plaintiff and respondent no.3 and 4. The defendant has no objection to the said consent terms. The learned counsel for the defendant submits that he has no objection to the plaintiffs withdrawing the amount of Rs.30000 deposited by her pursuant to the appellate court order with accrued interest if any. The plaintiffs will be at liberty to withdraw the said amount. The plaintiffs have also received over and above the same, a sum of Rs.30000 from the respondent nos.3 and 4 and he accepts the same in respect of full and final settlement of all his claims in the suit. Suit disposed of accordingly.